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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/817,635

04/02/2004

Loay K. Abukwedat

LA1C

2847

7590  
William S. Ramsey  
5253 Even Star Place  
Columbia, MD 21044

05/28/2008

EXAMINER

QAYYUM, ZESHAN

ART UNIT

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4137

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/817,635	<b>Applicant(s)</b> ABUKWEDAR, LOAY K.	
	<b>Examiner</b> ZESHAN QAYYUM	<b>Art Unit</b> 4137	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/21/2004</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Status of claims**

1. Claims 1-18 have been examined.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-14 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-14 of copending Application No. 10616838. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 14 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. With respect to claim 14, 'N' is indefinite because it is unclear what 'N' is. For purpose of applying prior art, examiner interprets this limitation to recite a positive integer greater than 3.

6. Claim 18 recites the limitation "last person" in line 2. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Burdick (Preferred Status for Organ Donors: A Report of the UNOS Ethics Subcommittee).

9. With respect to claim 1, Burdick discloses: a method capable of creating and managing a national registry listing therein organ donor status (it is noted that organ donor status is considered to be "capable of and willing to donate an organ") for an

individual (See page 3, paragraph 8) who need another organ (It is inherent that other individuals may participate for preferred status as well, and are considered to be "another donor- recipient") (Page 1 paragraph 1 and throughout).

- creating a waitlist record for a donor who also needs an organ (It is noted that a waitlist record is considered to be "compatibility parameters and matching criteria including the organ or part of organ needed by the potential donor-recipient") (page 4, paragraph 2) and eligibility to donate a particular organ based on known disease threatening the relevant organ (It is noted that the particular organ is considered to be "the organ or part of organ which can be donated" (page 3, paragraph 8), wherein the registry is maintained by computer (page 4 paragraph 2).
- storing the waitlist record with preferred status for the donor (page 4, paragraph 2).
- invoking a one-year waiting period before granting benefit (It is noted that changing the donor's status after the one-year waiting period from waitlisted to eligible is considered to be "modifying the donor-recipient record as the donor's recipient's circumstances change") (page 3 paragraph 8).

10. With respect to claim 2, Burdick discloses: specifying the needed organ, wherein the needed organ is a kidney (page 4 paragraph 5).

11. With respect to claim 3, Burdick discloses: classifying the patient needing the organ as elective, about to die, or have been waiting for years (page 2 paragraph 4).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 4-7, 9-10, 12-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Burdick in view of United Network for Organ Sharing (UNet User's Manual).

14. With respect to claim 4, Burdick discloses all the limitations as described above. Burdick does not teach step a. is performed at a transplant center and step b. is performed at a database server. UNet discloses updating donor status at an Organ Procurement Organization (OPO) (It is noted that an OPO is considered to be "a transplant center") (page 1 paragraph 1). UNet further discloses a national transplant data system, wherein donors are computer-matched with potential transplant candidates (It is suggested that a database server is used to operate the national transplant data system) (page 1 paragraph 1). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to include the teachings of UNet with the Burdick reference, since the operation of the data entry and storage method is

in no way dependent on the operation of the organ donor method, and any data entry and storage method may be used in with a standard organ donor method to achieve the predictable result of updating data.

15. With respect to claim 5, Burdick discloses all the limitations as described above. Burdick does not disclose; searching the database for matches between each new donor-recipient record and donor-recipient records in the database using suitable software. UNet discloses: searching the database for matches between each new donor-recipient record and donor-recipient records in the database using suitable software (See page 1, paragraph 1). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to include the teachings of UNet with the Burdick reference, since the operation of the matching method is in no way dependent on the operation of the organ donor method, and any matching method may be used in with a standard organ donor method to achieve the predictable result of finding a match.

16. With respect to claims 6-7, Burdick discloses all the limitations as described above. Burdick does not disclose; searching the database using a computer located at the transplant center or the server computer. UNet discloses: updating donor status at an Organ Procurement Organization (OPO) (It is noted that an OPO is considered to be "a transplant center") (page 1 paragraph 1). UNet further discloses; a national transplant data system, wherein donors are computer-matched with potential transplant candidates (It is inherent that a database server is used to operate the national

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transplant data system) (page 1 paragraph 1). UNet further discloses; that a team member "runs a match" to obtain a waiting list of potential transplant candidate for the donated organ (page 1 paragraph 1). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to include the teachings of UNet with the Burdick reference, since the operation of the data entry and search method is in no way dependent on the operation of the organ donor method, and any data entry and search method may be used in with a standard organ donor method to achieve the predictable result of updating data.

17. With respect to claim 9, Burdick discloses all the limitations as described above.

Burdick does not disclose; the recited steps when a match is found. UNet discloses:

- indicating disposition of donor organs (Page 72 Disposition Of Donor Organs) wherein the organ was transplanted (Page 75 code 501-502).
- indicating disposition of donor organs (Page 72 Disposition Of Donor Organs) wherein the organ was not transplanted due to an indicated reason (Page 74-75 code 200-299, 503-514).

Therefore it would have been obvious to one of ordinary skill in the art to include the teachings of UNet within the embodiment of Burdick, since the operation of the matching method is in no way dependent on the operation of the organ donor method, and any matching method may be used in with a standard organ donor method to achieve the predictable result of finding a match. (Ex parte Smith, 83 USPQ2d 1509 (Bd. Pat. App. & Int. 2007))



Burdick and UNet do not disclose “reentering the matched donor-recipient records into the non-completed file into the waiting list file”. However it would have been obvious to one of ordinary skill in the art at the time of invention to put the recipient back on the waitlist when the transplant was not completed successfully, as taught jointly by Burdick and UNet, with the motivation of finding another organ.

18. With respect to claim 10, Burdick discloses all the limitations as described above. Burdick does not disclose; a transplantation list and modifying the transplantation center list when a transplantation between donor-recipients takes place at a transplantation center with information on the transplantation and the outcome of the transplantation. UNet discloses; a list of donor hospital (page 9). UNet further discloses indicating disposition of donor organs (page 72 Disposition Of Donor Organs) wherein the outcome of the transplant is indicated (page 74-75). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to include the teachings of UNet within the embodiment of Burdick, since the operation of the matching method is in no way dependent on the operation of the organ donor method, and any matching method may be used in with a standard organ donor method to achieve the predictable result of recording case disposals. (KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)).

19. With respect to claim 12-15, Burdick discloses: a method capable of creating and managing a national registry listing therein organ donor status (It is noted that organ

donor status is considered to be "capable of and willing to donate an organ") for an individual (page 3 paragraph 8) who needs another organ (It is inherent that other individuals may participate for preferred status as well, and are considered to be "another donor-recipient") (page 1 paragraph 1 and throughout). It is predictable result that the method of Burdick is intended to result in a successful transplantation of a needed organ into a patient who may also donate another unneeded organ to another patient, wherein the pool of donors who participate is drawn from the national population (page 3, paragraph 8) (KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)).

20. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burdick and UNet as applied to claim 5 above, and further in view of Pollack (Molecular HLA class I typing for UNOS laboratories).

21. With respect to claim 8, Burdick in view of UNet discloses all the limitations described above. Burdick and UNet do not disclose; modifying the compatibility parameters or matching criteria of the new or existing donor-recipient record when no match between donor-recipient records is found. Pollack discloses: entering and matching alleles consistently (page 1, column 1, paragraph 1 and throughout). Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to include the teachings of Pollack within the embodiment of Burdick and UNet

with the motivation of generating the correct recipient list by UNet (Pollack; page 105, column 2, paragraph 3).

22. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burdick in view of DeBruin-Ashton (US 6014629).

23. With respect to claim 11, Burdick discloses all the limitations as described above. Burdick does not disclose: "a medical team list" comprising "information concerning the experience of the medical team and current location of the medical personnel". DeBruin-Ashton discloses a directory of group physician for health care provider service, wherein the directory is tailor to a patient based on the geographical location and medical specialty (it is noted that medical specialty is considered to be "experience") (See Abstract). Therefore it would have been obvious to one of ordinary skill in the art to include the teachings of DeBruin-Ashton within the embodiment of Burdick, since the operation of the physician directory is in no way dependent on the organ donor registry, and a standard physician directory may be used with any donor registry to achieve the predictable result of listing the available physicians. (KSR International Co. v. Teleflex Inc., 82 USPQ2d 1385 (U.S. 2007)).

24. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burdick in view of Organ Donation (<http://web.archive.org/web/20030125001338/http://organdonor.gov/>).

25. With respect to claim 16-18, Burdick discloses all the limitations as described above. Burdick does not explicitly disclose transplantation occur after the death of Donor. However it is an old and well known in the art. Organ donor can register as organ donor (donate organ after the death) at the time of getting driving license. (See <http://web.archive.org/web/20030125001338/http://organdonor.gov/>).

### ***Conclusion***

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Organ Donor (<http://web.archive.org/web/20030125001338/http://organdonor.gov/>) discloses organ donor can register as organ donor (donate organ after the death) at the time of getting driving license.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZESHAN QAYYUM whose telephone number is (571)270-3323. The examiner can normally be reached on Mon-Thr 7:30am-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Calvin Hewitt can be reached on 571-272-6709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Z. Q./

Examiner, Art Unit 4137

/Calvin L Hewitt II/

Supervisory Patent Examiner, Art Unit 4137